

Constitutional Law Exam 10

Fact Pattern:

The Federal Communication's Commission ("FCC") was established by Congress in the Communications Act of 1934 and is charged with regulating radio and television.

The FCC imposed the following new broadcast rule entitled "I can't hear myself think" Rule which bans the broadcasting of loud music on radio or television early in the morning or late at night.

Heavy metal bands from around the globe protested this new rule and lobbied Congress to change it. Congress eventually gave in and passed a new Statute abolishing the "I can't hear myself think" Rule called, "Stop Turning Down my Music"

All of these musicians descending on Washington, D.C. led to the President to become friends with several heavy metal bands from the United Kingdom. The bands complained to the President that there were huge rock music import tariffs in the U.S. and the U.K. which was hurting imported record sales in both countries. The President spoke with the Prime Minister of the U.K. and they worked out a treaty called the "We Will Rock You" Treaty which abolished all import tariffs on rock music albums in both countries.

The treaty went to the Congress, but the skittish public feared another "British Invasion" and Congress rejected the Treaty.

The President was not deterred, however, and simply entered into an executive agreement titled, "I Wanna Rock" with the U.K. which accomplished the same goals as the treaty.

The skittish public was furious at the President's actions. After all, this would surely mean an invasion. The public called for the President's removal from office.

Questions:

Please discuss the constitutionality of the Stop Turning Off my Music Statute and the President's I Wanna Rock executive order. What is the procedure to have the President removed from office? Can the President be impeached under these facts?

Example Answer

Constitutionality of the Stop Turning Off my Music Statute

Commerce Power

Does Congress have the power to pass the statute under the commerce clause?

Congress has the power to regulate commerce among the states. This power gives Congress a broad ability to regulate the channels, instrumentalities, and articles of interstate commerce or any commercial intrastate activity which substantially effects interstate commerce.

This power would give Congress the ability to set rules and regulations regarding television and radio.

However, as explained below, the facts of this case indicated that Congress delegated those powers to the FCC by the Communications Act of 1934.

Congressional Delegation of Powers

Does the delegation of powers to the FCC limit Congress' ability to exercise those powers further?

If Congress delegates broad power to the executive branch to draft specific rules it may only overturn those rules by additional legislation, not by any type of veto.

Here Congress, by the Communications act of 1934 delegated to the FCC the regulation of radio and television. The statute passed by Congress is not removing the FCC's powers entirely, rather Congress is simply taking issue with one rule set by the FCC. Congresses actions could therefore be seen essentially as a veto on powers already delegated. Congress does not have such a veto.

It is unknown under the facts whether the President signed this statute into law. If the President did sign the statute, the executive branch may have essentially waived any objection to the overturning of the rule by Congress.

Conclusion

While Congress does have the ability to regulate the airwaves, since they delegated that power to the FCC, Congresses current attempt to veto a single FCC rule will likely be found unconstitutional.

Constitutionality of the President's I Wanna Rock executive order

Foreign Affairs

Does the President's foreign affairs powers give him the ability to enter into the executive order?

The President is the chief spokesperson for the government, speaking with ambassadors and carrying out day-to-day relations with foreign governments.

The President may enter into executive agreements without Congress' consent unless Congress specifically denied the president's authority to enter into a particular agreement. Executive agreements, like treaties, become federal law.

Here the Congress already denied the passing of the formal Treaty. It is very likely that the President simply entering into an identical executive agreement with a new snazzy name will be found unconstitutional as it exceeded the president's powers.

Congressional Taxing Power

Does Congress' taxing power prevent the President from entering into the executive agreement?

The Constitution grants to Congress the power to lay and collect taxes. This is an independent source of congressional power.

Here the President is essentially vetoing a tariff already imposed by Congress. The President has no independent power to set or change tariffs.

The President's executive agreement may be an infringement on Congress' Taxing Power.

Procedure to have the President be removed from office

Impeachment

What is the procedure to have the President be removed from office? Can the President be impeached under these facts?

Congress can remove any officer of the U.S., including the President, Vice President, Cabinet members, and federal judges by impeachment. The

procedure to impeach is a two step process. First the House must vote by a majority to impeach. Second, the Senate must conduct an impeachment trial and vote by a two-thirds majority to impeach. Impeachment can only be for treason, bribery, and other "high crimes and misdemeanors."

Here because the skittish public thinks that a British "invasion" is imminent, the executive order might qualify as either treason or some other "high crime and misdemeanor." What the President can and cannot be impeached for remains an open question, but it is likely that the will of the people (no matter how foolish) would prevail in this instance.

The President can likely be impeached even though in reality he is only trying to lower the cost of music from the U.K.